

Remarks:

Applicants have studied the Office Action dated August 24, 2006, and have amended the claims to distinctively claim the subject matter of the invention. No claims have been added or cancelled. No new matter has been added. Support for the amendments is found within the specification. It is submitted that the application, as amended, is in condition for allowance. Reconsideration and reexamination are respectfully requested.

§102 Rejection(s):

Claims 1 -15

The Examiner has rejected claims 1-15 as anticipated under US 2004/0203384 (*Sugikawa*). It is respectfully noted that anticipation of a claim under 35 U.S.C. §102 (a), (b) and (e) requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," that "[t]he identical invention must be shown in as complete detail as is contained in the ... claim" and "[t]he elements must be arranged as required by the claim." M.P.E.P. §2131. Since *Sugikawa* fails to disclose at least one of the recited elements in the amended claims, a rejection under §102 would be improper.

Sugikawa discloses a short range radio communication system using an authentication scheme. The disclosed system has a first communication device and a second communication device for carrying out communications by setting up a communication link between the two devices. "...the identification code generated at the first communication device is presented to the second communication device, and the authentication data is generated by the use of this identification code by both communication devices..."(abstract).

Particularly the system of *Sugikawa* does not provide the identification and authentication procedure through a processing device that, as claimed, is independent of the communication protocol used by the network. Therefore, applying the identification and authentication procedure of *Sugikawa* on networks using different communication protocols requires designing and testing a complex software interface. *Sugikawa* fails to teach or suggest a processing device

that manages authentication and identification of messages communicated to a cellular device independent from a communication protocol used to communicate the messages.

Claim 1 is directed to a method for uniquely identifying a cellular device and authenticating a cellular message. A first short-range radio address for a cellular device is stored in a processing device, such as a server coupled to a cellular network. An authentication message is obtained by the processing device. First message digest is calculated by the processing device responsive to the authentication message and the first short-range radio address. A cellular message including the authentication message and the message digest is transmitted to the cellular device. The cellular device calculates a second message digest responsive to the authentication message and the second short-range radio address stored in the cellular device. The cellular device authenticates the cellular message by comparing the first message digest and the second message digest.

As claimed, the identification and authentication relies on the processing device that is independent of the communication protocol used by the network. Therefore, using different communication protocols do not require designing and testing complex software interface as suggested by *Sugikawa*. The processing device applies the identification and authentication procedure to various cellular networks. Therefore, the unique identification of a cellular device and authentication of a cellular message in different networks is possible without requiring designing and testing software interface to every particular network.

For the reasons stated above, claims 1 and 13-15, as amended, are not anticipated by *Sugikawa*. Claims 2-12 depend from an allowable base claim. Therefore, claims 2-12 are allowable as well.

Claims 16-27 and 29

On pages 6-9 of the Office Action, the Examiner rejects claims 16-27 and 29 as being anticipated by US 2004/0203372 (*Morimoto*). Applicants respectfully submit that upon reading paragraphs 20-24 of the office action it is not clear whether the examiner refers to *Morimoto* or

to US 2002/0126845 (*Hue*). Nevertheless, applicants assume, based on reading paragraph 36, that the Examiner refers to *Morimoto* alone. Applicants respectfully request notification if the intention of the Office Action is otherwise.

Morimoto provides a personal digital assistant, wireless communication system and method of link establishment. A personal digital assistant includes collating means for collating device addresses stored in storage means with unique device addresses received by receiving means, and establishes a Bluetooth link with an access point by the use of the matched device addresses collated by the collating means. (*Morimoto*, par. [0016]). *Morimoto* discloses a system and method which provide identification of stationary terminals. In the identification procedure practically all of the identification takes place in the personal digital assistant device that is reliant upon the communication protocol used by the network. Therefore, applying the system and method of *Morimoto* on networks using different communication protocols requires designing and testing a complex software interface that is dependent on the particular communication protocol.

Applicants have amended claims 16 and 29 to substantially incorporate the elements of claim 1. Therefore, and in the light of the above, it is respectfully submitted, that claims 16 and 29 are not anticipated by *Morimoto* and should be therefore in condition for allowance. Claims 17-27 and 29 depend on claim 16 and therefore should be in condition for allowance due to their dependence from an allowable base claim.

§103 Rejection(s):

Claim 28 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Morimoto* (*supra*) in view of U.S. Pub. No. 2004/0203950 (*Chen*). Applicants and Examiner agree that *Morimoto* does not explicitly disclose wherein the first, second, and third cellular messages are in a Global System for Mobile communication (“GSM”) protocol. The Examiner asserts that *Morimoto* in view of *Chen* would solve said deficiency, however, *Chen* fails to teach or suggest GSM.

Respectfully, the Examiner's statements (see page 10. Par. 34) for finding the combination obvious "because the processing device is capable of transmitting the message in GSM network" and "because it provides remote control on Bluetooth capable devices" is self-serving and not based on any logical or convincing reason. While the suggestion to combine references may come from the knowledge and common sense of a person of ordinary skill in the art, the fact that such knowledge *may* have been within the province of the ordinary artisan does not in and of itself make it so, *absent clear and convincing evidence of such knowledge*. C.R. Bard, Inc. v. M3 Systems, Inc., 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998) (emphasis added).

Here, the combination of teachings proposed by the Examiner is not based on any clear and convincing evidence of a reason, suggestion, or motivation in the prior art that would have led one of ordinary skill in the art to combine the references. Rather, the reason, suggestion and motivation for the combination of references proposed by the Examiner simply is impermissible hindsight reconstruction given the benefit of Appellant's disclosure.

The Federal circuit has consistently held that hindsight reconstruction does not constitute a prima facie case of obviousness under 35 U.S.C. § 103. In re Geiger, 2 USPQ2d 1276 (Fed Cir. 1987). Unfortunately, the Office Action rather than pointing to what the prior art discloses and teaches as to making the suggested combination relies on assumptions and statements without any support in the record. As such, the Examiner's statements regarding obviousness and motivation to combine are but shortcuts to a conclusion of obviousness devoid of the required analytical approach based on what is actually disclosed in the prior art.

Reliance on impermissible hindsight to avoid express limitations in the claims and setting forth unsupported hypothetical teachings to recreate the Applicant's claimed invention cannot establish a prima facie case of obviousness. Since obviousness may not be established by hindsight reconstruction, Applicants invite the Examiner to point out

the alleged motivation to combine with specificity,¹ or alternatively provide a reference or affidavit in support thereof, pursuant to MPEP §2144.03.²

Further, no reasonable justification is provided in the Office Action as to how such combination is possible. Obviousness may not be established based on conjecture. Therefore, it is respectfully requested that the 103 rejection be reconsidered and withdrawn.

Claims 30-53

The Examiner rejected claims 30-53 as encompassing the same scope as claims 1-29 and therefore applied the reasons set forth in the rejections of claims 1-29 to claims 30-53. Applicants assert that claims 30-53, inasmuch as they have been amended in similar manner to claims 1-29, and for the foregoing arguments regarding claims 1-29, are in condition for allowance as well. Therefore, Applicants respectfully request reconsideration and withdrawal of these rejections as well.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicants have expressly argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California, telephone number (213) 623 2221 to discuss the steps necessary for placing the application in condition for allowance.

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¹ *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

² "The rationale supporting an obviousness rejection may be based on common knowledge in the art or "well-known" prior art . . . If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position. When a rejection is based on facts within the personal knowledge of the examiner . . . the facts must be supported, when called for by the applicant, by an affidavit from the examiner."

Approved as a matter of form exclusive of content.

Respectfully submitted,

/F. Jason Far-hadian/

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